



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,229	03/16/2004	Tatsuya Hojo	5576-158	2013

7590 08/29/2006  
Myers Bigel Sibley & Sajovec  
Post Office Box 37428  
Raleigh, NC 27627

EXAMINER

STITZEL, DAVID PAUL

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,229	<b>Applicant(s)</b> HOJO ET AL.	
	<b>Examiner</b> David P. Stitzel, Esq.	<b>Art Unit</b> 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 9 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/14/04</u> . | 6) <input type="checkbox"/> Other: _____  |

**OFFICIAL ACTION**

***Acknowledgment of Receipt***

Receipt of the Applicants' Response and election, *without traverse*, of Invention I encompassing claims 1-4 and 9, which was filed on June 6, 2006, in response to the Official Action dated May 11, 2006, is acknowledged.

***Status of Claims***

Claims 5-8 were canceled by an amendment that accompanied the aforementioned Response. As a result, claims 1-4 and 9 are therefore examined herein on the merits for patentability.

***Claim Rejections - 35 U.S.C. § 112, Second Paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. § 112, which forms the basis of the claim rejections as set forth under this particular section of the Official Action:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-4 and 9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

More specifically, claim 1 of the instant application recites various limitations including "the first polymer chamber" and "the second polymer chamber." However, there is insufficient antecedent basis for these limitations in claim 1. Appropriate correction is required.

In addition, claims 1 and 9 of the instant application recite the limitation "the remainder." However, there is insufficient antecedent basis for this limitation in claims 1 and 9. Appropriate correction is required.

With respect to claims 3 and 4 of the instant application, confusion exists as to what constitutes “toward?” More specifically, the term “toward” is a relative term that renders claims 3 and 4 indefinite. The term “toward” is not defined within said claims, the instant specification does not appear to provide a standard for ascertaining the requisite degree of what constitutes “toward,” and one of ordinary skill in the art would not be reasonably apprised of the scope of the claimed invention (i.e., whether “toward” is meant to include either attracting or repelling, and/or killing said two or more species of insect pests). It is recommended that Applicants amend claims 3 and 4 of the instant application by deleting the term “toward” and insert in place thereof, “for controlling,” which finds support in paragraph [0038] under Example 1 of U.S. Pre-Grant Patent Application Publication 2004/0185080 of the instant application. Appropriate correction is required.

Claim 2, which is dependent upon and includes all of the limitations of independent claim 1, is therefore likewise rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Appropriate correction is required.

***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraph of 35 U.S.C. § 102, which forms the basis of the anticipation rejections as set forth under this particular section of the Official Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by European Patent Application Publication EP0540932A1 (hereinafter the Buschmann ‘932 publication).

With respect to claims 1-4 and 9 of the instant application, the Buschmann '932 publication discloses a containment device for protecting agricultural crops, wherein said containment device comprises a sex pheromone controlled release dispenser for simultaneously controlling two or more insect pests, wherein said sex pheromone controlled release dispenser comprises two or more polymeric chambers comprising two or more sex pheromones, such as (Z)-9-dodecenyl acetate (Z9-12:OAc), (Z)-9-tetradecenyl acetate (Z9-14:OAc) and/or (Z)-11-tetradecenyl acetate (Z11-14:OAc), wherein said Z9-12:OAc has a faster diffusion rate as compared to said Z9-14:OAc and said Z11-14:OAc, due to the respective physicochemical properties (i.e., molecular weight and vapor pressure) of said sex pheromones, wherein each of said two or more polymeric chambers may be overlaid with a particular pheromone permeable polymeric film laminate and/or vary in size and/or shape, so as to simultaneously impart an optimal release rate of each of said two or more sex pheromones, thereby providing for the simultaneous control of said two or more insect pests (page 2, lines 1-15; page 4, lines 4-9; page 8, lines 5-7 and 12-14; page 9, lines 8-11 and 22-24; page 10, lines 1-2; page 12, lines 6-8 and 14-22; page 13, lines 1-2, 10-23; page 14, lines 18 and 19; page 15, lines 7-12 and 16-18; page 16, lines 1-3 under Example 2; claims 1, 3 and 6-8).

### ***Conclusion***

Claims 1-4 and 9 are rejected because the claimed invention is anticipated since each and every element of the claimed invention, as a whole, is disclosed in the cited prior art references.

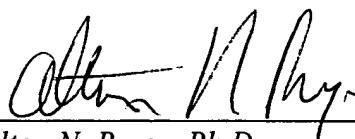
### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David P. Stitzel, M.S., Esq., whose telephone number is 571-272-8508. The Examiner can normally be reached on Monday-Friday, from 7:30AM-6:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Johann Richter, Ph.D., Esq., can be reached at 571-272-0646. The central fax number for the USPTO is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published patent applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished patent applications is only available through Private PAIR. For more information about the PAIR system, please see <http://pair-direct.uspto.gov>. Should you have questions about acquiring access to the Private PAIR system, please contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*David P. Stitzel, M.S., Esq.*  
*Patent Examiner*  
*Technology Center 1600*  
*Group Art Unit 1616*

  
*Alton N. Pryor, Ph.D.*  
*Primary Patent Examiner*  
*Technology Center 1600*  
*Group Art Unit 1616*